

JPA



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,708	03/09/2004	Gary Lee Knirk	60,137-242; 118-3004-U	2929
26096	7590	03/28/2005	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/796,708	Applicant(s) KNIRK ET AL.	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, drawn to a bathroom support bar, classified in class 004, subclass 576.1.
 - II. Claim 7, drawn to a method of forming a support bar, classified in class 004, subclass 661.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process/method and apparatus for its practice.

The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process/method such as a method that does not require the step of slitting the tube stock and bending tabs for providing a mounting flange.

3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 3751

5. During a telephone conversation with Mr. Theodore W. Olds on 03/07/05 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-6. Affirmation of this election must be made by applicant in replying to this Office action. Claim 7 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6, given the broadest reasonable interpretations, are rejected under 35 U.S.C. 103(a) as being unpatentable over Koering (1721306).

Regarding claim 1, the Koering reference discloses a bathroom support bar for hanging towels. The support bar includes a bar (Fig. 1) having central portion (at 1) and a pair of integrally formed ends (at 2, 3) bent away from the central portion. The support bar also includes a mounting flange (at 7) for each

of said ends, wherein each of said mounting flanges having a plurality of tabs extending outwardly.

Even though the Koering reference does not specifically disclose that the bar is formed of a hollow thin walled tube material as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Koering device by forming the bar using a hollow thin walled tube material. Such modification would be considered a mere choice of a preferred material that (a) is on the basis of its suitability for the intended use and (b) is less expensive to manufacture since it requires less material to make a hollow thin wall bar than that of solid wall bar.

Furthermore, even though the Koering device includes several parts i.e. the bar with ends and the mounting flanges, they are secured together as a single unit; constituent parts are so combined as to constitute a unitary whole, which is "integral" within meaning of claim; "integral" is not limited to a fabrication of parts from a single piece of metal, but is inclusive of other means for maintaining parts fixed together as a single unit. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Koering reference by having the mounting flange formed integrally with the ends of the bar because the use of one piece construction instead of reference structure is matter of obvious engineering choice. *In re Larson*, 144 USPQ 347 (CCPA 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951).

Regarding claim 2, there are three of said tabs in each of the mounting flanges (Fig. 3).

Regarding claim 3, the support bar also includes a separate cover (at 5, 6) disposed at each end to cover each mounting flange (Fig. 1).

Regarding claim 4, as schematically shown in Figure 1, the tube is cylindrical.

Claim 5 recites limitations that are substantially similar to the limitations recited in claims 1 and 3 which have been rejected as discussed supra.

Claim 6 recites limitations that are substantially similar to the limitations recited in claim 2 which has been rejected as discussed supra.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Koering ('305) was cited to show a towel bar having central portion with ends, a mounting flange with three tabs and a cover for the mounting flange. Sarkisian was cited to show a towel bar having central portion with ends and a mounting flange with three tabs formed integrally with each end.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Patent Examiner
Art Unit 3751

HK
03/22/05